

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0325
ADJUSTED GROSS INCOME TAX
For Years 1996 and 1997**

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ISSUES

I. Adjusted Gross Income Tax—Adequate Documentation

Authority: 45 IAC 15-5-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of Indiana's adjusted gross income tax.

STATEMENT OF FACTS

Taxpayer is an employee in a beauty salon. In the course of taxpayer's employment taxpayer received unreported tip income for the tax years at issue. A departmental audit assessed the taxpayer eight percent (8%) tip income subject to adjusted gross income tax that should have been reported by taxpayer. The taxpayer did not produce documents, only arguments. Taxpayer and his representative filed a protest, claiming the documents and/or taxpayer's position would be presented at the hearing. Taxpayer did not provide documentation after several written requests and after returning the file to the auditor.

I. Adjusted Gross Income Tax—Adequate Documentation

DISCUSSION

At hearing, taxpayer's representative protests the increase in income from services and the tips, arguing that the taxpayer's employer operates on a different model than the typical hair styling salon resulting in limited tip income. Taxpayer states he has available for inspection, documents supporting his contention that the taxpayer did not earn tip income in the amount of eight percent (8%). Taxpayer's representative further states that the assessment is in error because the auditor treated each employee of the business exactly the same. Said records were not provided within the time period, nor has taxpayer provided any indications that said records will be produced.

This issue for decision is whether the taxpayer received unreported tip income during 1996 and 1997 in the amounts determined by the department. Tips are includable in gross income as compensation for services rendered under IRS Code Section 6053.

Taxpayer maintained no records from which her tip income could be determined. In the notice of deficiency, the auditor reconstructed the taxpayer's tip income by multiplying her gross sales by 8%, the percentage of tip income shown in Federal Code Sec.6053 (c)(3)(A)(i). The 8% rate is available only for the audit period.

Because the Taxpayer did not maintain any records of her tip income, the Department is authorized to compute taxpayer's tip income in accordance with a method that, in the auditor's opinion, clearly reflects such income. Taxpayer bears the burden of proving that the auditor's determination is erroneous. Taxpayer presented a copy of the Federal Tax Returns indicating the taxpayer reported \$1,473 and \$1,109 in tips in 1996 and 1997 respectively. No other evidence to refute the department's determination of her tip income was provided.

The department finds that the department's determination must be sustained for the balance of tips not reported.

Taxpayer was negligent in failing to maintain accurate records of her tip income as required by section 6001 of the Internal Revenue Code, and she presented no evidence to justify her conduct.

Taxpayer does not cite any statute, regulation, or case law for the proposition that the auditor was required to accept taxpayer's assertions as to the nature of the transactions without any supporting documentation. Taxpayer has, however, produced into evidence the filing of the Federal Income Tax Returns that indicate a partial filing of tip income. The Department will adjust the tip income by \$1,473 and \$1,109 for 1996 and 1997 respectively. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has failed to establish a basis for reversal of the balance of the assessment.

FINDING

Taxpayer's protest is partially denied.